

# EXHIBIT 13

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI

TRINITY LUTHERAN CHURCH OF  
COLUMBIA, INC.

Plaintiff,

v.

Carol S. Comer, in her official  
Capacity as Director of the Missouri  
Department of Natural Resources Solid  
Waste Management Program,

Defendant.

Case No. 2:13-cv-4022-NKL

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**DECLARATION OF JONATHAN R. WHITEHEAD IN SUPPORT OF  
PLAINTIFF'S MOTION FOR ATTORNEYS' FEES AND COSTS**

I, Jonathan R. Whitehead, under penalty of perjury, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am filing this declaration to demonstrate the reasonableness of both my hourly rate and the total amount of compensable time that I incurred in this case.

**Background**

2. I am co-counsel for Trinity Lutheran Church and have worked on this litigation since 2013, as the case moved from the District Court, to the 8th Circuit, and to the Supreme Court of the United States. I was one of four attorneys present at counsel table for the argument of the case to the United States Supreme Court.

3. I have been an attorney licensed to practice law in Missouri since 2004. My practice includes a background in complex civil litigation, as well as the law surrounding nonprofit, religious and tax-exempt organizations.

4. I am a 2004 graduate of Harvard Law School, where my coursework included classes on nonprofit organizations.

5. Prior to starting my current firm, the Law Offices of Jonathan R. Whitehead, LLC, I was an associate with the firm of Graves Bartle & Marcus LLC, in Kansas City; I began my practice as an associate at the firm of Sonnenschein Nath & Rosenthal (now known as Dentons) in Kansas City, Missouri.

6. I am admitted to practice in the State of Missouri, the United States District Court for the Western District of Missouri, and the United States Supreme Court.

7. For the bars and courts in which I have been admitted, I am a member in good standing and there are no grievance proceedings or any other disciplinary actions pending against me. In addition, I have never been held in contempt of court, censured, disbarred, or suspended by any court.

8. In addition to the case at bar, I have served as lead or co-counsel in numerous cases involving the application of Missouri law to religious organizations, including *Heartland Presbytery v. Gashland Presbyterian Church*, 364 S.W.3d 575, 577 (Mo.App.W.D. 2012) (neutral principles applicable to religious property issues); *Exec. Bd. of Missouri Baptist Convention v. Carnahan*, 170 S.W.3d 437, 441 (Mo. Ct. App. 2005); *Exec. Bd. of Missouri Baptist Convention v. Windermere Baptist Conference Ctr.*, 280 S.W.3d 678, 683 (Mo. Ct. App. 2009); *Exec. Bd. of Missouri Baptist Convention v. Missouri Baptist Found.*, 380 S.W.3d 599, 601 (Mo. Ct. App. 2012); *Exec. Bd. of the Missouri Baptist Convention v. Missouri Baptist Found.*, 497 S.W.3d 785, 788 (Mo. Ct. App. 2016), *as corrected* (June 2, 2016), *reh'g and/or transfer denied* (July 5, 2016), *transfer denied* (Sept. 20, 2016); *Zavala, et al., v. Castaneda, et al.*, No. 1216-CV00297 (Jackson County, Missouri, Circuit Court)(construction of church governing documents); *see also Sioux*

*Chief Mfg. Co. v. Sebelius*, 13-cv-0036 (W.D.Mo.)(injunction for closely-held Missouri manufacturer with religious objections to HHS abortifacient mandate).

9. Further, I have authored and filed amicus briefs before the United States Supreme Court on behalf of various clients in matters involving the First Amendment, including *Town of Greece v. Galloway*, 572 U.S. \_\_\_\_ (2014); *Reed v. Town of Gilbert*, 576 U.S. \_\_\_\_ (2015); and *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, et al., No. 16-111 (U.S. 2017) (brief on behalf of Seventy-Five Members of Congress).

10. Since 2015, I have been a member of the attorney steering committee for an annual continuing legal education program on religion and the law, held at Law School of the University of Missouri at Kansas City, which presents an annual program on current issues in this field.

11. I was asked by Michael Whitehead to begin to provide assistance to Plaintiff in this matter, through the Whitehead Law Firm LLC, in 2013, at about the time of Plaintiff's motion for reconsideration (*see* PACER DOC 33); I agreed to do so.

12. By working on Trinity Lutheran Church's case, I was precluded from working on other matters or taking on other representation that I might otherwise have been able to take on.

13. This case would have been undesirable for most attorneys to undertake because it lacked a guaranteed fee.

14. For the period of 2016 and 2017, my standard billing rate for work performed during the period was \$300.00 per hour. This rate is consistent with the prevailing market rate in the Kansas City area, where many attorneys of my experience would bill in excess of \$300.00 per hour to litigate a complex case, and would not do so without a guaranteed fee. Thus, the rate is reasonable in comparison to amounts approved for experienced counsel in the Western District by the Supreme Court of Missouri (*see Berry v. Volkswagen Grp. of Am., Inc.*, 397 S.W.3d 425, 429

(Mo. 2013), and consistent with surveys of similar work, such as Missouri Lawyers' Weekly's annual report on billing rates. It is well below rates recently approved as reasonable by this Court in matters involving the civil rights; *see Washington v. Denney*, No. 2:14-CV-06118-NKL, 2017 WL 4399566, at \*3 (W.D. Mo. Oct. 3, 2017), especially given this Court's recognition that attorneys willing to undertake important work without a guaranteed fee should be compensated for such risk. *See Clark v. Gen. Motors, LLC*, 161 F. Supp. 3d 752, 768–69 (W.D. Mo. 2015)(Kays, J.).

15. I have reviewed the time records for services performed and submitted by me in this matter, which are submitted contemporaneously with this declaration.

16. All of the time recorded was reasonably and necessarily spent in representing the Plaintiff in this matter. All of the time submitted is at standard rates for non-profit organization clients, based on market rates for attorneys and paralegals of similar experience in the pertinent market Kansas City and mid-Missouri.

17. I have reviewed these records, as I review all time records before submission, in that I make judgments on a regular basis regarding time spent that is reasonable and necessary for legal services performed on behalf of my clients.

18. The concurrently filed itemized statement sets forth my task-based time based upon contemporaneous time records kept via timekeeping software. I exercised my billing judgment by reducing duplicative, administrative, or otherwise unreasonable time expenditures.

19. While I began working on this matter in 2013, much of my involvement through appeal was limited to reviewing pleadings and informal (though sometimes lengthy) discussions concerning the briefing and presentation of the appeal. Based on my billing judgment, I have not submitted a claim for such hours, because I cannot be certain that it did not duplicate the efforts of

others.

20. Further, some of my work on this matter has involved responding to local media requests and coordinating client response to such matters. In my billing judgment, I have not submitted a claim for such hours, because such work was not directly related to the presentation of the Plaintiff's case to any court.

21. Therefore, I am submitting a request only for those hours directly attributable to this matter, while engaged in conduct that I believe was necessary to the case, related to the presentation of the case before the United States Supreme Court in 2016 and 2017, and proceedings following.

22. The total time I have submitted on this case is 87.8 hours, which reflects my billing judgment as indicated above. At a billing rate of \$300.00 per hour, this results in a current amount of \$26,340.00 that may properly be claimed against Defendants.

23. In addition, I incurred \$1,192.21 in necessary travel and lodging related to the preparation and presentation of this case to the United States Supreme Court, for a total request for my fees and expenses of \$27,532.21.

[28 U.S.C. § 1746 DECLARATION AND SIGNATURE ON FOLLOWING PAGE]

**DECLARATION UNDER PENALTY OF PERJURY**

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 23rd day of January, 2018, at Lee's Summit, Missouri.

Respectfully submitted,

LAW OFFICES OF JONATHAN R  
WHITEHEAD LLC

By:

Jonathan R. Whitehead, Mo. 56848

229 S.E. Douglas St., Ste. 210

Lee's Summit, Mo 64063

816.398.8305 - Phone

816.278.9131 – Fax

jon@whiteheadlawllc.com

*Attorney for Trinity Lutheran Church of  
Columbia, Inc.*

# INVOICE

From **Law Offices of Jonathan R. Whitehead LLC**  
229 SE Douglas, Ste. 210  
Lee's Summit, MO 64063

Invoice For **Whitehead Law Firm**  
c/o Michael K. Whitehead  
1100 Main Street, Ste. 2600  
Kansas City, Missouri 640105

Invoice ID **381**  
Issue Date **01/23/2018**  
Due Date **01/23/2018 (upon receipt)**

Description	Quantity	Unit Price	Amount
Trinity Lutheran - 04/13/2016 - Legal Services / Jonathan Whitehead: Review, discussion and suggestions for merits brief for petitioners.	2.50	\$300.00	\$750.00
Trinity Lutheran - 07/05/2016 - Legal Services / Jonathan Whitehead: Review, notes for Brief of respondent Sara Parker Pauley, Director, Missouri Department of Natural Resources.	1.50	\$300.00	\$450.00
Trinity Lutheran - 07/26/2016 - Legal Services / Jonathan Whitehead: Email from ADF counsel concerning case and response.	0.20	\$300.00	\$60.00
Trinity Lutheran - 08/01/2016 - Legal Services / Jonathan Whitehead: Receive draft brief from ADF co-counsel; begin review and notes; email from M. Whitehead concerning brief.	1.50	\$300.00	\$450.00
Trinity Lutheran - 08/02/2016 - Legal Services / Jonathan Whitehead: First edits; additional research concerning State of Missouri's arguments in its brief; obtain cases cited by Missouri and initial review.	2.50	\$300.00	\$750.00
Trinity Lutheran - 08/03/2016 - Legal Services / Jonathan Whitehead: Obtain, review opposing amicus briefs; obtain cases cited; additional edits to amicus brief.	3.00	\$300.00	\$900.00
Trinity Lutheran - 08/04/2016 - Legal Services / Jonathan Whitehead: Additional edits to brief; research Smith individualized exception doctrine; review law review articles on Smith individualized exception doctrine; suggestions concerning Smith individualized exception doctrine and relation to Sherbert.	3.00	\$300.00	\$900.00
Trinity Lutheran - 08/05/2016 - Legal Services / Jonathan Whitehead: Additional edits to brief, focused on arguments of potential benefits to religious organizations arising out of generally neutral public programs, such as fire and safety. Research concerning recent Missouri expenditures to churches in public databases.	2.50	\$300.00	\$750.00
Trinity Lutheran - 08/10/2016 - Legal Services / Jonathan Whitehead: Final edits and email to ADF counsel with edits; email from M. Whitehead; discussion with M. Whitehead to coordinate edits.	1.50	\$300.00	\$450.00
Trinity Lutheran - 10/21/2016 - Legal Services / Jonathan Whitehead: Email to M. Whitehead concerning newest argument calendar and potential for local causes; Discussion with M. Whitehead and multiple emails.	0.50	\$300.00	\$150.00
Trinity Lutheran - 11/18/2016 - Legal Services / Jonathan Whitehead: Email from ADF concerning case; reply.	0.10	\$300.00	\$30.00
Trinity Lutheran - 02/10/2017 - Legal Services / Jonathan Whitehead: Email to D. Cortman, E. Stanley, M. Whitehead.	0.10	\$300.00	\$30.00
Trinity Lutheran - 03/21/2017 - Legal Services / Jonathan Whitehead: Email from ADF counsel, M.	0.10	\$300.00	\$30.00

Whitehead concerning moots.

Trinity Lutheran - 03/27/2017 - Legal Services / Jonathan Whitehead: Email from E. Stanley concerning case; multiple emails concerning scheduling of meetings.	0.40	\$300.00	\$120.00
Trinity Lutheran - 03/28/2017 - Legal Services / Jonathan Whitehead: Multiple emails and discussions concerning argument preparations.	1.50	\$300.00	\$450.00
Trinity Lutheran - 04/06/2017 - Legal Services / Jonathan Whitehead: Email from ADF concerning argument; draft of questions for moot courts on issues of rule; review questions for counsel in Hernandez v. Mesa; "play in the joints"; questions concerning case or controversy; facts/questions concerning anti-Catholic history of Missouri's 1865 and 1875 Constitutions.	3.20	\$300.00	\$960.00
Trinity Lutheran - 04/11/2017 - Legal Services / Jonathan Whitehead: Multiple emails to/from ADF concerning moot and argument preparation; obtain, review amicus brief from opposing parties and begin to review for moot court preparation.	5.00	\$300.00	\$1,500.00
Trinity Lutheran - 04/12/2017 - Legal Services / Jonathan Whitehead: Emails to/from ADF and M. Whitehead concerning argument.	0.30	\$300.00	\$90.00
Trinity Lutheran - 04/12/2017 - Legal Services / Jonathan Whitehead: Additional review of amicus briefs and cases cited in preparation for moot court; attend moot court session at Georgetown; post-moot discussion and meeting with counsel; prepare for next moot.	12.00	\$300.00	\$3,600.00
Trinity Lutheran - 04/13/2017 - Legal Services / Jonathan Whitehead: Attend moot/review with ADF counsel and other attorneys; notes concerning issues raised; research funding of programs available to children in Missouri; receive news of Governor's announcement and multiple discussions concerning impact.	9.00	\$300.00	\$2,700.00
Trinity Lutheran - 04/14/2017 - Legal Services / Jonathan Whitehead: Researching of mootness; additional research concerning impact of Governor's announcement on this case, begin gathering cases on mootness; multiple discussions with M. Whitehead;	6.00	\$300.00	\$1,800.00
Trinity Lutheran - 04/17/2017 - Legal Services / Jonathan Whitehead: Travel to hearing; meet with clients and prepare for argument.	12.00	\$300.00	\$3,600.00
Trinity Lutheran - 04/18/2017 - Legal Services / Jonathan Whitehead: Prepare; argument; note follow-up items from argument.	7.00	\$300.00	\$2,100.00
Trinity Lutheran - 04/19/2017 - Legal Services / Jonathan Whitehead: Return travel.	8.00	\$300.00	\$2,400.00
Trinity Lutheran - 06/26/2017 - Legal Services / Jonathan Whitehead: Review opinion(s) in Trinity Lutheran.	0.50	\$300.00	\$150.00
Trinity Lutheran - 08/02/2017 - Legal Services / Jonathan Whitehead: Notice from clerk re-opening judgment at 8th Circuit; email concerning the same.	0.10	\$300.00	\$30.00
Trinity Lutheran - 08/04/2017 - Legal Services / Jonathan Whitehead: Receive notice from W.D.Mo. concerning remand of case; email to ADF Counsel concerning deadlines for amended bill of costs; email from ADF.	0.20	\$300.00	\$60.00
Trinity Lutheran - 08/09/2017 - Legal Services / Jonathan Whitehead: Emails concerning motion for remand; clerk's order, certificate of compliance.	0.10	\$300.00	\$30.00
Trinity Lutheran - 08/16/2017 - Legal Services / Jonathan Whitehead: Emails concerning updated motion for remand.	0.20	\$300.00	\$60.00
Trinity Lutheran - 08/29/2017 - Legal Services / Jonathan Whitehead: Email concerning clerk's	0.10	\$300.00	\$30.00

notice on bill of costs at 8th Circuit.

Trinity Lutheran - 01/18/2018 - Legal Services / Jonathan Whitehead: Email from ADF concerning fee application; research concerning local law on fee applications and short memo concerning recent precedents.	1.20	\$300.00	\$360.00
Trinity Lutheran - 01/22/2018 - Legal Services / Jonathan Whitehead: Preparation of fee application; email to M. Whitehead.	2.00	\$300.00	\$600.00
Trinity Lutheran - 03/03/2017 - Transportation / Jonathan Whitehead: Southwest Airlines to Washington, D.C. for argument.	1.00	\$383.88	\$383.88
Trinity Lutheran - 03/13/2017 - Lodging / Jonathan Whitehead: Hotel - April 13.	1.00	\$357.95	\$357.95
Trinity Lutheran - 03/28/2017 - Transportation / Jonathan Whitehead: Southwest Airlines to/from Washington, D.C., April 12-13; early boarding fee.	1.00	\$450.38	\$450.38
<b>Amount Due</b>			<b>\$27,532.21</b>

# Expense Report for Invoice #381

Law Offices of Jonathan R.  
Whitehead LLC

**03/03/2017**

**\$383.88**

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Client           **Whitehead Law Firm**  
Project         **Trinity Lutheran**  
Category       **Transportation**  
Person          **Jonathan Whitehead**

Southwest Airlines to Washington, D.C. for  
argument.

**03/13/2017**

**\$357.95**

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Client           **Whitehead Law Firm**  
Project         **Trinity Lutheran**  
Category       **Lodging**  
Person          **Jonathan Whitehead**

Hotel - April 13.



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WHITEHEAD, JONATHAN

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UNITED STATES OF AMERICA

Room No: 1000/K1RZ  
Arrival Date: 4/12/2017 1:17:00 PM  
Departure Date: 4/13/2017 1:08:00 PM  
Adult/Child: 1/0  
Cashier ID: CHKE  
Room Rate: 312.62  
AL: F9 030889073  
HH # 840001916 SILVER  
VAT #  
Folio No/Che 268903 A

Confirmation Number: 3339911266

HILTON GARDEN INN-WASHINGTON DC/US CAPITOL 4/13/2017 1:07:00 PM

DATE	DESCRIPTION	ID	REF NO	CHARGES	CREDIT	BALANCE
4/12/2017	GUEST ROOM	SMORRIS ON	1010611	\$312.62		
4/12/2017	ROOM OCCUPANCY TAX	SMORRIS ON	1010611	\$45.33		
4/13/2017	AX *3006	CHKE	1011086		(\$357.95)	
**BALANCE**						\$0.00

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CREDIT CARD DETAIL

APPR CODE	589005	MERCHANT ID	4080260326
CARD NUMBER	AX *3006	EXP DATE	02/20
TRANSACTION ID	1011086	TRANS TYPE	Sale

**03/28/2017**

**\$450.38**

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Client           **Whitehead Law Firm**  
Project       **Trinity Lutheran**  
Category      **Transportation**  
Person       **Jonathan Whitehead**

Southwest Airlines to/from Washington, D.C.,  
April 12-13; early boarding fee.



Jonathan Whitehead &lt;jon@whiteheadlawllc.com&gt;

## Flight reservation (5KCLVA) | 12APR17 | MCI-DCA | Whitehead/Jonathan R

1 message

Southwest Airlines &lt;SouthwestAirlines@luv.southwest.com&gt;

Tue, Mar 28, 2017 at 10:40 PM

Reply-To: Southwest Airlines &lt;reply@wnco.com&gt;

To: jon@whiteheadlawllc.com

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Air itinerary

AIR Confirmation: 5KCLVA

Confirmation Date: 03/28/2017

Passenger(s)	Rapid Rewards #	Ticket #	Expiration	Est. Points Earned
WHITEHEAD/JONAT HAN R	20424399564	5262497894213	Mar 28, 2018	2191

Rapid Rewards points earned are only estimates. Visit your (MySouthwest, Southwest.com or Rapid Rewards) account for the most accurate totals - including A-List &amp; A-List Preferred bonus points.

Date	Flight	Departure/Arrival
Wed Apr 12	1742	Depart <b>KANSAS CITY, MO (MCI)</b> on Southwest Airlines at <b>09:35 AM</b> Arrive in <b>WASHINGTON (REAGAN NATIONAL), DC (DCA)</b> at <b>12:50 PM</b> Travel Time 2 hrs 15 mins Wanna Get Away

Date	Flight	Departure/Arrival
Thu Apr 13	1452	Depart <b>WASHINGTON (REAGAN NATIONAL), DC (DCA)</b> on Southwest Airlines at <b>4:10 PM</b> Arrive in <b>KANSAS CITY, MO (MCI)</b> at <b>6:00 PM</b> Travel Time 2 hrs 50 mins Wanna Get Away

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**10 minutes before departure:** You must obtain your boarding pass(es) and be in the gate area for boarding at least 10 minutes prior to your flight's scheduled departure time. If not, Southwest may cancel your reserved space and you will not be eligible for denied boarding compensation.



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**Air Cost: 420.88**

Fare Rule(s): 5262497894213: NONREF/NONTRANSFERABLE/STANDBY REQ UPGRADE TO Y.

Valid only on Southwest Airlines. All travel involving funds from this Confirmation Number must be completed by the expiration date. Unused travel funds may only be applied toward the purchase of future travel for the individual named on the ticket. Any changes to this itinerary may result in a fare increase. Failure to cancel reservations for a Wanna Get Away fare segment at least 10 minutes prior to travel will result in the forfeiture of all remaining unused funds.

MKC WN WAS90.92NZNUNNR WN MKC274.18QLN7PNR 365.10 END  
ZPMCIDCA XFMCI4.5DCA4.5 AY11.20\$MCI5.60 DCA5.60



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### Cost and Payment Summary

**AIR - 5KCLVA**

Base Fare	\$ 365.10
Excise Taxes	\$ 27.38
Segment Fee	\$ 8.20
Passenger Facility Charge	\$ 9.00
September 11th Security Fee	\$ 11.20
<b>Total Air Cost</b>	<b>\$ 420.88</b>

#### Payment Information

Payment Type: Amer Express XXXXXXXXXXXX3006  
Date: Mar 28, 2017  
Payment Amount: \$420.88

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Jonathan Whitehead &lt;jon@whiteheadlawllc.com&gt;

## EarlyBird Confirmation - 5KCLVA

1 message

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 Reply-To: Southwest Airlines <reply@wnco.com>  
 To: jon@whiteheadlawllc.com

Tue, Mar 28, 2017 at 10:39 PM

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#### EarlyBird Check-In

**Confirmation Number: 5KCLVA**

Passenger	Departure/Arrival	Flight	Date
Jonathan Whitehead	Depart <b>Kansas City, MO (MCI)</b> on Southwest Airlines at <b>9:35 AM</b>  Arrive in <b>Washington, D.C. (DCA)</b> at <b>12:50 PM</b>	#1742	<b>Wed Apr 12</b>  Travel Time 2 h 15 m
Jonathan Whitehead	Depart <b>Washington, D.C. (DCA)</b> on Southwest Airlines at <b>4:10 PM</b>  Arrive in <b>Kansas City, MO (MCI)</b> at <b>6:00 PM</b>	#1452	<b>Thu Apr 13</b>  Travel Time 2 h 50 m

Price: \$15.00 per person, one-way

**Total Cost: \$30.00**

#### Cost and Payment Summary

##### Payment Information

Payment Type: AMERICAN\_EXPRESS XXXXXXXXXXXX-3006  
 Payment Amount: \$30.00

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